IN THE SUPREME COURT OF OHIO

No. 32,750

ALICE M. HALLIDAY, Administratrix of the Estate of Janet M. Halliday, Deceased,

Appellant,

vs.

THE YORK-LAKE CO., ET AL.,

Appellees

STATEMENT IN OPPOSITION TO APPELLANT'S STATEMENT AS TO JURISDICTION. MOTION BY APPELLEES TO DISMISS OR AFFIRM.

The appellees, Cleveland Metal Fabricating Co., Sylvester T. Dailey, Alice L. Dailey, Rollo V. Lais, Marvel Window Cleaner, Inc., Edward B. Meyer, and Union Properties, Inc., for their joint statement in opposition to appellant's statement as to jurisdiction herein, and in support of said appellees' motion to dismiss the appeal or affirm the judgment of the Supreme Court of Ohio, respectfully state the following.

I. Statement of Issues on Appeal

No cause of action has been presented by the record in this case, which consists mainly of the second amended petition of plaintiff, the answers of the defendants, and the opening

statement of counsel for plaintiff. The undisputed facts are not such as can constitute the basis for the consideration of the question which plaintiff seeks to present in this appeal.

The action is one for declaratory judgment and went to trial in the Common Pleas Court upon the second amended petition of plaintiff-appellant, consisting of fourteen pages of narration of facts concerning prior judicial proceedings brought to final conclusion at various times during a period of more than twenty years preceding the filing of this action. The trial court, upon motion of the defendants at the end of the opening statement of counsel for plaintiff, dismissed the action for the reason that: "no cause of action has been stated in this second amended petition." (Opinion of Judge Blythin, attached to appellant's statement as to jurisdiction.)

Quite contrary to the statements made by appellant in this appeal, the record discloses a complete failure on the part of appellant to establish any interest in the Ohio lands that could have been prejudiced by the Torrenization proceedings regularly conducted pursuant to the Torrens laws of Ohio. Lacking the establishment in this case of any such rights, the assertion by appellant, that the decisions of the Ohio courts in any way violated the "due process clause" of the Fourteenth Amendment of the Constitution of the United States, is entirely unfounded. Appellant cannot challenge the constitutionality of a law on a mere theoretical or conjectural issue.

The question sought to be presented in this appeal is appellant's claim that the Ohio statutes, commonly called the Torrens Act, respecting registration of land titles, comprising sections 8572-1 through 8572-117 of the Ohio General Code, are repugnant to that portion (Section 1) of the Fourteenth Amendment of the Constitution of the United States which forbids the States to deprive any person of

property without due process of law. Appellees deny that the judgments of the Ohio courts involve the question of constitutionality, as claimed here. Appellees also deny that there can be any substantial question of constitutionality of the Ohio Torrens Act, in the light of long-standing decisions of the Supreme Court of the United States.

II. No Substantial Federal Question as to Validity of a State Statute Is Presented by the Appeal

This action, commenced in July of 1949, in the Court of Common Pleas for Cuyahoga County, Ohio, was brought by the administratrix d.b.n. of the estate of Janet M. Halliday, who died January 2, 1929. The plaintiff-appellant's Second Amended Petition sought a declaratory judgment establishing an equity of redemption in certain lands, located in Cuyahoga County, in favor of three corporations, The York-Lake Co., The Richmond Improvement Co. and The Inland Properties Co., all of the stock of which formerly was owned by the decedent, Janet M. Halliday.

In litigation concluded in 1931, the three corporations had been ordered dissolved by the Court of Appeals for Cuyahoga County, and the lands in question, title to which was then held by the three corporations, had been conveyed, pursuant to the decree of dissolution, to the then administrator of Janet M. Halliday's estate. Motion to certify had been overruled by the Supreme Court of Ohio. The then administrator of Janet M. Halliday's estate had been a party to this litigation.

A resume of the facts of this 1930-1931 litigation is to be found in *Halliday* v. *The York Lake Co.*, 125 O.S. 608, 183 N.E. 791 (1932), which concluded a subsequent effort by one of the parties to prosecute error proceedings as of right, following overruling of certain motions by the Court of Appeals.

Subsequently, mortgages previously placed upon the real estate had been foreclosed and the properties had been sold pursuant to decrees of foreclosure. The then administrator of the estate of Janet M. Halliday had been a party in each of the foreclosure proceedings and had contested them in protracted litigation.

The three corporations were not parties to the foreclosure proceedings, having no ostensible claim or interest in the lands following conveyance of their title to the administrator of Janet M. Halliday's estate pursuant to the Court of Appeals decree in the previous litigation.

In 1946, at the instance of Union Properties, Inc., which had purchased the lands at foreclosure, the Court of Common Pleas of Cuyahoga County had decreed registration of title of said lands in Union Properties, Inc., pursuant to the so-called torrens law of Ohio. The appellant complains that the three corporations were not parties to the registration proceedings; although they had been dissolved by final judicial proceedings fifteen years earlier.

Prior to the torrens decree, deeds had been executed in the names of the three dissolved corporations, and said deeds had been recorded, purporting to convey the right and title of each of the three corporations to a corporation called Midland Properties Company. Midland Properties Company and the then administrator of Janet M. Halliday's estate and all her heirs at law were parties defendant in the registration proceedings. The Court of Appeals affirmed the registration decree and appeal of Midland Properties Company was dismissed by the Supreme Court of Ohio. *Union Properties, Inc.* v. *Wedge Protectors, Inc.*, 148 O. S. 148, 73 N. E. 2d 805 (1947).

Following the registration of these lands by torrenization proceedings, the lands were sold to various purchasers. Six appellees in the present action, namely Sylvester T.

Dailey, Alice L. Dailey, Marvel Window Cleaner, Inc., Rollo V. Lais, Cleveland Metal Fabricating Company, and Edward B. Meyer are present owners of portions of said lands, each having acquired his property for value and in good faith, either directly from the original registrant or through intermediate transferees.

In 1949, an attempt was made, in the name of the three corporations, which had been parties to the proceedings by which they were judicially dissolved in 1930-1931, to reopen said proceedings in the Court of Appeals, for correction of alleged errors therein, but this attempt failed. An effort to coerce the Court of Appeals by mandamus collapsed in *State ex rel. Inland Properties Co.* v. *Court of Appeals*, 151 O. S. 174, 84 N. E. 2d 922 (1949).

The Second Amended Petition, in the present action, reasserts the alleged errors in the judicial proceedings of 1931, dissolving The York-Lake Co., The Richmond Improvement Co. and The Inland Properties Co. The equities of redemption of these three corporations, according to the theory of Plaintiff-Appellant, have never been foreclosed and the torrens proceedings by which title of the properties were registered are said to be ineffectual because the three corporations were not parties to them. All this is claimed in the name of the administratrix of the estate of Janet M. Halliday, whose predecessors as fiduciary were parties to all of the litigation the validity of which is now attacked.

In the trial court, the Court of Common Pleas for Cuyahoga County, Ohio, judgment was rendered in favor of defendants (present appellees), upon their motion at conclusion of plaintiff's opening statement, the Court concluding that no cause of action was presented. The trial court's complete comprehension of the facts is shown by its opinion (Exhibit A to appellant's statement as to jurisdiction.) This judgment was affirmed by unanimous decision of the Court of Appeals. The Supreme Court of Ohio dismissed

appellant's appeal, for the reason that no debatable constitutional question was presented to it; and also overruled the appellant's motion for an order directing the Court of Appeals to certify its record, no questions being presented that were of great public interest.

It was obvious that the claimed cause of action, if one ever existed, was res judicata because the plaintiff's predecessors as administrator, and all possible parties in interest, had participated as parties in all of the litigation validity of which was challenged; and that, similarly, the judicial proceedings of 1930-31 dissolving the corporations and transferring title to their lands was not subject to collateral attack.

True, the Common Pleas Court and the Court of Appeals both made reference to the conclusive effect of the registration decree, under the Ohio Torrens Act, as against collateral attack; but the position of the appellant was not such as to entitle her to challenge the constitutionality of the Act. Her second amended petition alleged that both she, individually, and the then administrator of the estate which she later represented, were defendants in the land registration proceeding.

Furthermore the three corporations, whose rights were alleged to have been impaired, had, prior to the rendition of the torrens decree executed and delivered deeds to the Midland Properties Company "purporting to convey all of the parcels of real property above described". The language quoted is from appellant's second amended petition, page 10, last paragraph. Since the second amended petition also alleges that the Midland Properties Company was a party to the torrens proceedings, the grantors can have no rights that are not barred by the registration decree.

There is not a word, in the record of the proceedings in the trial court, to sustain the assertion, in appellant's state-

ment as to jurisdiction, that the Union Properties, Inc., the plaintiff in the land registration proceedings, then knew of any claims asserted on behalf of the three corporations. Union Properties, Inc. bought the properties at foreclosure long after the corporations had been judicially dissolved in litigation to which Union Properties, Inc. was not a party.

If appellant is deprived of property by the Ohio Torrens Act, it must be because the dissolved corporations, all of the stock of which she claims to own, are barred from asserting title to lands by reason of the lands having been registered. Their claims of title, which the trial court herein found groundless, depended upon a chain of highly disputable legal deductions, involving collateral attack on judicial proceedings that had been finally determined. These dissolved corporations were not in possession at the time of the registration proceedings. Their officers had signed and delivered deeds, which were of record, purporting to relinquish all title. It is not surprising that they were not named as parties: it is to set at rest such claims as these that the Torrens Act provides (Section 8572-14, Ohio General Code) for publication of notice to unknown claimants.

The Ohio Torrens Act takes care that all persons whose claims can reasonably be ascertained shall be made parties to registration proceedings, by requiring (Section 8572-13, Ohio General Code) that, in each case, the court cause an examination to be made of both the title and physical condition of the property to be registered. There is no claim that this was not done here, or that any irregularity occurred in the proceedings, saving only (if that be an irregularity) the omission, as parties, of three dissolved corporations whose claims were dependent upon an extremely involved series of legal deductions.

One of the principal purposes of land registration proceedings is to bar all claims such as those asserted here.

Hence, notice of the proceedings is published, as provided in Section 8572-14 of the Ohio General Code. The registration decree becomes conclusive, with certain exceptions, as provided in Section 8572-22 of the Ohio General Code. In significant part Section 8572-22 provides that:

> "Sec. 8572-22. If the court after a hearing finds that the applicant has title in whole or in part as stated in his application, and proper for registration, then to the extent of the title so found a decree of confirmation and registration shall be entered, which shall have the effect of a decree in rem and, subject only to the exceptions stated in section 25 (General Code 8572-25), shall bind the land and all interests, rights and estates therein and liens and charges thereon and, after the expiration of the time to prosecute error or appeal and except as otherwise provided in this act (G. C. 8572-1 to 8572-118), shall be absolutely conclusive upon and against all persons including the state or any political subdivision thereof, whether mentioned by name in the application, notice, or other papers in the case, or as unknown heirs and devisees, or included in the general description 'all other persons if any, having any right or interest in or lien upon the lands or any part thereof,' and whether under disability, not in being, unknown or unascertained; and after the expiration of the time for prosecuting error or appeal, except as otherwise provided in this act (G. C. 8572-1 to 8572-118), no such person shall in any of the courts of this state assert by suit or otherwise any claim to an interest or estate in or lien or charge upon registered land in derogation of or contrary to the purport of such decree. Such decree shall not, after the expiration of the time for prosecuting error or appeal, be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any suit or proceeding at law or in equity for opening up judgments or decrees by reason of a party not having had actual notice of the suit or proceedings; but any person deprived of land or of any estate or interest therein

or lien or charge thereon by a decree of registration obtained by fraud may file a petition in the case to open up and review the same within one year after the entry of the decree, provided no innocent purchaser for value, mortgagee or other lien holder has acquired an interest. If there is any such purchaser, mortgagee or other lien holder, the decree of registration shall not as to them or any person holding under them be opened, but shall remain in force and effect forever, subject only to the right of appeal and to prosecute error. But any person who is aggrieved by such decree in any case may pursue his remedy by action of a tort against the applicant or against any other person for fraud in procuring the decree. * * *"

As stated by Judge Cardozo, when a member of the New York Court of Appeals:

> "Certificates of registration would be worthless if their effect could be undone by evidence that an outstanding right or interest had been misapprehended or omitted. The very purpose of the proceeding is to set such controversies at rest." *City of New York* v. *Wright*, 243 N. Y. 80, 152 N. E. 472, 473 (1926).

If the barring of such claims, as those asserted by appellant, by a torrens registration decree renders the Ohio Torrens Act unconstitutional, then no torrens law can be constitutional. The basic purpose of every such statute is to set at rest all latent title claims.

The Supreme Court of the United States, in *American Land Company* v. *Zeiss*, 219 U. S. 47, 55 L. Ed. 82 (1911), sustained the constitutional validity of land registration statutes of California, designed to quiet titles following destruction of public records on the occasion of the San Francisco earthquake of 1906. In its opinion (219 U. S. pp. 65-67) the Court said:

> "It is to be borne in mind that it has been settled (Griffith v. Connecticut, 218 U. S. 563, and cases cited)

that the Fourteenth Amendment does not operate to deprive the States of their lawful power, and of the right in the exercise of such power to resort to reasonable methods inherently belonging to the power exerted. On the contrary, the provisions of the due process clause only restrain those arbitrary and unreasonable exertions of power which are not really within lawful state power, since they are so unreasonable and unjust as to impair or destroy fundamental rights."

"* * * To argue that the provisions of the statute are repugnant to the due process clause because a case may be conceived where rights in and to property would be adversely affected without notice being actually conveyed by the proceedings is in effect to deny the power of the State to deal with the subject. The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals. * * *"

Similar expressions are to be found in the opinion of Chief Justice Oliver Wendell Holmes, of the Supreme Judicial Court of Massachusetts, in *Tyler* v. *Judges of the Court of Registration*, 175 Mass. 71, 55 N. E. 812 (1900), writ of error dismissed, 179 U. S. 405, 45 L. Ed. 252, upholding the constitutional validity of a Massachusetts torrens law. Benjamin N. Cardozo, as an associate judge of The New York Court of Appeals, wrote the opinion of that court, upholding constitutionality of a New York torrens law, in *City of New York* v. *Wright*, 243 N. Y. 80, 152 N. E. 472 (1926). Both of these eminent judges were afterwards distinguished members of the Supreme Court of the United States.

The "just and reasonable character" of the requirements of the Ohio Torrens are not even called in question by the present appellant, whose claim evidently is that every torrens law that purports to bar claims of persons not

parties to the registration proceeding necessarily contravenes the Fourteenth Amendment.

It is respectfully submitted that the judgment appealed from is sustainable on numerous valid legal grounds that do not depend upon the Torrens Act, and that the question presented by this appeal has long ago been so definitely determined that no substantial question is presented by this appeal entitling appellant to invoke the jurisdiction of the Supreme Court of the United States.

WHEREFORE, appellees respectfully move that the within appeal be dismissed or that the judgment and decree of the Supreme Court of Ohio be affirmed.

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February 26, 1952.